

NEBRASKA ENVIRONMENTAL TRUST BOARD

TITLE 137

RULES AND REGULATIONS GOVERNING ALLOCATIONS FROM THE NEBRASKA ENVIRONMENTAL TRUST FUND

07/31/96 (Board meeting date) Approved addition of Section 005 to Chapter 8

TABLE OF CONTENTS

Subject of Title	Code Statutory Authority	Chapter
Application Process	§81-15,175	Ch. 3
Criteria for Eligibility	§81-15,175	Ch. 4
Definitions	§81-15,175	Ch. 9
Environmental Priorities	§81-15,175	Ch. 2
Evaluating Proposals for Eligibility	§81-15,175	Ch. 5
Grant Administration	§81-15,175	Ch. 8
Project Ranking System	§81-15,175	Ch. 6

Ranking Eligible Projects for Funding	§81-15,175	Ch. 7
Scope of the Trust Activities	§81-15,175	Ch. 1

02/07/95 (Board meeting date) Amendment to Section 002.

Chapter 1 - SCOPE OF THE TRUST ACTIVITIES

001 Scope of the Trust Fund. The Environmental Trust Fund shall be administered by the Trust Board for the purpose of conserving, enhancing, and restoring the natural physical and biological environment in Nebraska, including the air, land, ground water and surface water, flora and fauna, prairies and forests, wildlife and wildlife habitat, and natural areas of aesthetic or scenic values. In a manner consistent with these rules and regulations and the governing statute, the Trust Board shall administer the Trust Fund to complement existing governmental and private efforts by encouraging and leveraging the use of private resources on environmental needs with the greatest potential benefit on future environmental quality in Nebraska.

002 Scope of other Trust Board Activities. The primary function of the Trust Board shall be to administer the Environmental Trust Fund. In administering the Fund, the Trust Board may solicit gifts, grants and donations to supplement the Fund's assets. In addition to the environmental priorities established pursuant to Chapter 2 of these rules and regulations, the Trust Board will develop a long-range environmental focus which encompasses the vision of all Nebraskans regarding the future of the environment. The Trust Board shall also cooperate with and assist other units of the state, political subdivisions, and private, public, and federal agencies, foundations, and individuals in furtherance of the purposes of the Trust Fund, but will not on its own be the entity

undertaking programs and projects funded by the Trust Fund. The Trust Board also will not acquire assets other than those monetary assets deposited in the Trust Fund from lottery proceeds and from gifts, grants, and donations. The Trust Board will not own land or be the holder of any other legal interest in land. The Trust Board may establish subcommittees, request or contract for assistance, or establish advisory groups to evaluate the economic, financial and technical feasibility of proposals.

02/07/95 (Board Meeting date) Amendments proposed in Section 004.

Chapter 2 - ENVIRONMENTAL PRIORITIES

001 Initial Statutory Priorities. The Trust Board shall observe the following initial priorities for allocating funds prior to July 1, 1995. The priorities listed below are not listed with any particular significance as to their priority.

001.01 Critical habitat areas, including wetlands acquisition, preservation, and restoration and acquisition and easements of areas critical to rare or endangered species.

001.02 Surface water quality, including actions to preserve lakes and streams from degradation;

001.03 Ground water quality, including fostering "best management" practices as defined in section 46-657, actions to preserve ground water from degradation, and remediation of soils or ground water; and

001.04 Development of recycling markets and reduction of solid waste volume and toxicity.

002 Refining and Clarifying Initial Priorities. The Trust Board may make any desired refinements and clarifications in these initial priorities as appropriate. Before making such refinements and clarifications, the Trust Board shall hold at least one public meeting where the public is offered the opportunity of commenting on the proposed refinements and clarifications.

003 Establishing Five-Year Priorities. The Trust Board shall establish priorities for Trust Fund allocations for five-year periods, the first period beginning on July 1, 1995. The Trust Board will conduct at least one public meeting in each of the three congressional districts to obtain input and recommendations for the first five-year priorities. Decisions on the initial five-year priorities shall be made in accordance with the annual calendar and shall govern allocations made from the fund after July 1, 1995. Projects which have received allocations in accordance with the statutory priorities lasting until July 1, 1995, will remain eligible for disbursements until the project is completed consistent with the original grant agreement.

004 Refinements and Clarifications in Five-Year Priorities. The Trust Board may make any desired refinements and clarifications in five-year priorities at any time. However, such refinements and clarifications shall not adversely affect the eligibility of a project for funding assistance unless they were adopted prior to the date established by the Trust Board opening the subsequent applications cycle. Before making such refinements and clarifications, the Trust Board shall hold at least one public meeting where the public is offered the opportunity of commenting on the proposed refinements and clarifications.

Chapter 3 - APPLICATION PROCESS

001 Form of Application and Accompanying Materials. An applicant for financial assistance from the Trust Fund shall file one original and 6 copies of the application and all supporting materials at the office of the Trust Fund. The contents of the application shall include a completed application form supplied by the Board and such additional information to demonstrate the project's eligibility for funding according to criteria

defined in Chapter 4 and to demonstrate the project's consistency with the annual rating factors as defined in Chapter 6.

001.01 Applicants are encouraged to submit all application materials in 8.5" by 11" format. Applicants including materials which cannot be produced in this format, or which require special processing, may be required to submit up to 17 copies of such documents.

001.02 The Executive Director shall review each application submitted and shall determine whether the application is complete for initial review. The Eligibility and Rating Subcommittee of the Trust Board shall review each such application and shall make a preliminary recommendation of approval or rejection of the proposal for eligibility.

001.03 For any application, the Eligibility and Rating Subcommittee will determine whether further information will be needed to evaluate the eligibility of the proposal. If additional information is needed, the Executive Director will so notify the applicant, and provide a reasonable time period for submission of the additional material.

002 Time Frame for Filing and Review. All applications shall be filed by the date set by the Trust Board as part of the annual calendar for the application and review process. All necessary reviews of each application shall also be completed in accordance with that annual calendar.

02/07/95 (Board meeting date) Addition of Section 001.12, and amendments to Section 003.

Chapter 4 - CRITERIA FOR ELIGIBILITY

001 Eligibility Requirements. To be eligible for consideration in the annual rating process for funding, the applicant's proposed project must be consistent with the following criteria for eligibility as described in sections 002 to 006 of this chapter.

001.01 The applicant must demonstrate that the project is environmentally acceptable.

001.02 The project must have clear and direct environmental benefits.

001.03 The project must make a real contribution to achieving the Trust Board's environmental priorities.

001.04 The project must provide public benefits.

001.05 The funds requested will provide assistance only to proposals which are deemed financially and technically feasible.

001.06 The funds requested shall not be used to provide direct assistance to regulatory programs.

001.07 The funds requested shall not be used to implement actions mandated by regulations except remediation.

001.08 The funds requested shall not pay for private benefits or provide assistance to projects whose benefits are primarily private in nature.

001.09 The funds requested shall not be used to relieve private liability for environmental damage.

001.10 The funds requested shall not pay for projects which have direct beneficiaries who could afford the costs of the benefits without experiencing serious financial hardship.

001.11 The fund shall not pay for land or easements acquired without the full and express consent of the landowner.

001.12 The Trust Board may establish specific eligibility criteria for specific grant programs or initiatives by affirmative vote after public hearing.

002 Environmental Acceptance. A project is considered to be environmentally acceptable when:

002.01 The project will not jeopardize the continued existence of any threatened or endangered species or result in the destruction or modification of the critical habitat of any such species and shall meet the requirements contained in the Nongame and Endangered Species Conservation Act, Neb. Rev. Stat. §37-430 et seq.; and

002.02 The plan of development minimizes any adverse impacts on the natural environment, adequately addresses existing cultural resources and results in environmental net gain.

002.03 In addition to any proposed mitigation measures, all aspects of the project which can be anticipated to result in environmental enhancement shall be considered in determining whether the plan minimizes adverse impacts. To assist the Trust Board in determining environmental acceptability, the applicant, if required by the Board, will demonstrate the probable environmental, ecological and public health consequences of the project by addressing all items identified on an environmental acceptance form provided by the Trust Board and such other items as the applicant or the Trust Board identifies as relevant to the issue of environmental acceptance.

003 Clear and Direct Environmental Benefits. A project will be considered to have clear and direct environmental benefits if the realization of those benefits can be reasonably expected, as a result of the project and if those benefits will be obvious, even if not quantifiable. The application will need to describe the environmental benefits anticipated

as a result of the project and how those benefits will be clearly and directly attained. Both planning and educational projects may be considered to have clear and direct environmental benefits.

004 Contribution to Achieve the Trust Board's Environmental Priorities. Only those projects which contribute to the then existing environmental priorities established pursuant to Chapter 2 of these rules shall be eligible for financial assistance.

005 Public Benefits. For a project to be eligible for funding assistance, it must produce public, not just private benefits.

006 Financial and Technical Feasibility. Financial and technical feasibility may be evaluated by the use of subcommittees, contractual assistance or advisory groups. Standards for each of these factors are as set out below:

006.01 Financial Feasibility. A project is financially feasible if sufficient funds can be made available to complete the project and if sufficient annual revenues can be obtained to operate, maintain, and replace the project as applicable. Each applicant shall submit a project budget identifying the nature and amount of each source of funds to be used for the project; a schedule indicating when such funds will be received; and a schedule indicating when the funds available will be expended for project purposes. The remaining financial data supplied by the applicant will depend upon the type of applicant.

006.02 Technical Feasibility. A project that is structural in nature shall be considered technically feasible when it can and will be designed, constructed, and operated to accomplish the purpose(s) for which it was planned utilizing accepted engineering and other technical principles and concepts. A project which is nonstructural in nature shall be considered to be technically feasible when it can and will be designed and carried out to accomplish the purpose(s) for which it was planned.

007 Projects and Activities Not Eligible for Funding

007.01 The fund shall not provide direct assistance to regulatory programs.

007.02 The fund shall not provide direct assistance to implement actions mandated by regulations, except remediation.

007.03 The fund shall not pay for private benefits or provide assistance to projects or portions of projects whose benefits are primarily private in nature. Compensation for contributions made to a project, such as land or land rights, shall not constitute payment for private benefits.

007.04 The fund shall not relieve private liability for environmental damage or, except for projects for remediation of soils or ground water, provide assistance to projects in order to relieve such liability. For purposes of this section, "private liability" shall mean liability to a person or entity and shall include fines or penalties imposed by a governmental entity.

007.05 The fund shall not pay for projects to the extent such projects have direct beneficiaries who could afford the costs of the benefits without experiencing serious financial hardship. For purposes of this section, "direct beneficiaries" shall not be deemed to include a person who receives incidental benefits from a project which primarily benefits the general public. Serious financial hardship shall be determined by a financial capability test which shall be developed and made available by the Trust Board.

Chapter 5 - EVALUATING PROPOSALS FOR ELIGIBILITY

001 Eligibility Review. Upon receipt of all application material, the Executive Director shall submit the application to the Eligibility and Rating Subcommittee of the Trust

Board appointed by the Chairperson and any technical advisory committee(s) established by the Trust Board for final eligibility review. The Subcommittee and advisory committees shall complete their reviews so that the application may be considered in accordance with the annual calendar established by the Trust Board. The Subcommittee or any technical advisory committee may request additional information from the applicant.

002 Eligibility and Rating Subcommittee Action. After receiving comments from any technical advisory committee reviewing an application, the Eligibility and Rating Subcommittee shall make the following recommendations to the Trust Board:

002.01 A recommendation of approval or rejection of the project for funding eligibility.

002.02 A recommended degree of assistance for the project if it is found eligible by the Trust Board and if it receives sufficient ranking to permit funding.

002.03 Any conditions which the subcommittee recommends be placed on the project to ensure its consistency with the objectives of the Trust Fund and with other state policies, plans, and programs.

003 Required Findings. Prior to making any recommendation to the Trust Board for approval of a project for funding eligibility, the subcommittee shall determine that the project is consistent with the requirements of Chapter 4 of these rules.

004 Eligibility Findings Combined With Recommended Ratings. The Eligibility and Rating Subcommittee shall make the recommendations to the Trust Board on project eligibility in accordance with this chapter and at the same time provide the Trust Board with a preliminary ranking list for all projects in accordance with Chapter 7 of these rules.

005 Action by the Trust Board on Eligibility Recommendations. The Trust Board may adopt or revise and adopt the recommendations of the Eligibility and Rating Subcommittee. For each project for which eligibility is established by the Trust Board,

the Trust Board shall also establish the total amount of money for which the project is eligible if it receives sufficient ranking for funding. Projects determined eligible for funding by the Trust Board shall not be entitled to any funds until they have been subjected to the annual ranking process and have received sufficient ranking for funding given the funds available.

Chapter 6 - PROJECT RANKING SYSTEM

001 Pursuant to this Chapter and the factors set forth herein, the Executive Director shall prepare a Project Ranking System to be used to rank all applications which are eligible. The Project Ranking System shall be approved by an affirmative vote of the Trust Board after public hearing. Similarly, any subsequent amendments to the Project Ranking System shall be approved by an affirmative vote of the Trust Board after public hearing.

002 The Project Ranking System adopted by the Trust Board shall be used by the Subcommittee for ranking of projects as described in Chapter 7.

003 Ranking Factors. The Project Ranking System shall provide for a range of points for each ranking factor. Points shall be assigned to each project to the extent that the project will accomplish the following:

003.01 Conform with the priorities established pursuant to Chapter 2 of these rules.

003.02 Produce a commitment of funds from other funding sources.

003.03 Provide in-kind match to requested grant funds.

003.04 Result in a public-private partnership.

003.05 Help the Trust Board attain a geographic mix of projects over time. This does not mean that a strict geographic mix will be sought during each funding cycle but that points may be awarded to projects in specific areas if it becomes

apparent that the area is receiving funding for proportionately fewer projects than other areas of the state.

003.06 Be cost effective. Cost effective shall include, as applicable, a comparison of the cost of the project to its expected monetary and non-monetary benefits and whether there is another reasonably available means of accomplishing the same purpose or purposes more economically.

003.07 Have economic impacts.

003.08 Produce direct environmental impacts.

003.09 Produce environmental benefits to the general public, especially benefits which are long term in nature.

003.10 Provide a plan for evaluating the results of the expenditure of grant funds.

004 Projects which are funded as multi-year projects may be exempted from the ranking process by the Trust Board for the duration of the project or for up to the next two annual rankings following the ranking in which the initial commitment to the project is made provided that annual evaluations of progress toward project goals are submitted and accepted by the Executive Director.

02/07/95 (Board meeting mdate) Amendment to Section 004.

Chapter 7 - RANKING ELIGIBLE PROJECTS FOR FUNDING

001 After the evaluation of applications for eligibility, all eligible projects shall be ranked according to the Project Ranking System.

002 Preliminary ranking shall be performed by the Eligibility and Ranking Subcommittee of the Trust Board appointed by the Chairperson. In deciding the

assignment of points for each eligible project, the Subcommittee shall do so in a manner which provides a fair comparison of projects regardless of cost. More expensive projects shall not receive additional points just because they are larger in scale. Points shall be assigned with consideration of the anticipated effects of the project relative to its costs. The Subcommittee may request assistance from the Executive Director to the extent necessary to evaluate each proposal.

003 The Subcommittee may request additional information from any applicant in written form. All additional supplements shall be in writing and signed by the applicant.

004 The Subcommittee shall report the results of the ranking process to the Chairperson by the date established therefore on the annual calendar approved by the Trust Board. The report shall indicate the results of the ranking process with the highest scoring project at the top of the list along with the number of points scored and the amount of funding suggested to be approved. Lower ranked projects shall follow in sequential order showing the same information for each.

005 Upon receipt of the Subcommittee report, the Chairperson shall call a meeting of the Trust Board to adopt or revise and adopt the subcommittee report and schedule a public hearing on the proposed funding list.

006 After the public hearing is conducted on the proposed funding list, the Trust Board may take action on actual funding. If the Trust Board decides that any proposed project does not have sufficient merit to justify funding from the Trust, the Trust Board may choose not to fund the project notwithstanding its consistency with eligibility criteria or its final ranking. The proposed list may be revised after the public hearing only with the approval of eleven members.

007 Notwithstanding ratings determined in this Chapter, no allocation of funds shall be made for remediation in a manner inconsistent with 81-15,176 (2)(b).

Chapter 8 - GRANT ADMINISTRATION

001 After the Trust Board takes action to award grants to specific projects, the Executive Director shall begin notification procedures. The Executive Director shall also prepare grant documents for disbursement in accordance with this chapter.

001.01 Grant documents shall include a notice of grant award, a disbursement schedule, standard conditions and any special conditions all of which will be included in a grant agreement to be signed by the grantee.

002 The Executive Director shall prepare standard conditions applicable to all grants and shall have discretion to negotiate specific conditions within the limits of the intent specified by the Trust Board.

003 Grant award letters which bind the fund shall be signed by the Chairperson and the Executive Director.

004 The grant period shall be a set period of time designated in the grant documents based upon activities approved for grant funding. All grant funds shall be expended in accordance with conditions of the grant. Any unexpended funds remaining after the grant period shall be returned by the grantee to the Fund.

004.01 All interest earned by grant funds shall be considered a part of the grant and, therefore, is subject to all of the requirements of the grant.

005 Any grant agreement which includes the transfer or acquisition of real property which is taxable before such transfer or acquisition shall specify a mechanism to address the continued payment of property taxes or payments in lieu of property taxes.

006 Any grant agreement which includes a construction project may require, but not be limited to, the following special conditions:

006.01 Final plans and specifications shall be approved by the Executive Director. The Executive Director may require that plans and specifications be stamped by a Professional Engineer registered to practice in the State of Nebraska.

006.02 A construction schedule including commencement of construction; accountability for inspection during construction; construction completion; and initiation of operation (if applicable).

006.03 The Executive Director may provide a contingency within the grant for change orders.

006.03A All change orders must be approved by the Executive Director in a manner set out within the grant agreement.

006.04 Upon completion of the project, a certification of completion shall be filed with the Trust Board which certifies that construction was substantially consistent with the approved plans and specifications. The certification shall be signed by the grantee. The Executive Director may also require a certification signed by a Professional Engineer registered to practice in the State of Nebraska.

007 The applicant shall assure the Executive Director that all legal requirements have or can be met prior to the allocation of funds. Legal information may include the following as appropriate for the project, this list is not exclusive to other necessary information:

007.01 If the applicant is a governmental entity, citation(s) to the legal authorities relied upon by the applicant to undertake or participate in the project.

007.02 An explanation, with appropriate documentation of legal authorities, of the applicant's intention to finance that part of the project for which assistance from the fund is not requested.

007.03 A showing that the applicant has or can acquire any necessary land rights or water rights.

007.04 Copies of any available proposed or executed contracts or bids for construction or consultant services necessary for completion of the project which would help document the project's estimated costs.

007.05 A listing of any permits, licenses, or other approvals required for the project, their current status, and the estimated schedule for compliance.

007.06 An explanation of the applicant's plan to require consultants, contractors, and subcontractors to obtain liability insurance or bonding to ensure the proper design and construction of the project as applicable.

007.07 An analysis of the applicant's potential liability for damages because of the project including failure of structural measures and an explanation of the applicant's plan to protect itself from any such liability.

007.08 Such other information, plans, and specifications as requested by the Executive Director or the Trust Board and are reasonably necessary to confirm the applicant's authority.

008 Funds shall be disbursed to the grantee no more often than once per month in accordance with the grant agreement.

009 The grantee shall keep financial records for the project and shall submit periodic progress reports as required to the Executive Director during the grant period. At the end of the grant period, the grantee shall submit a final financial report summarizing the project. Failure to submit the progress reports may be considered a violation of the grant agreement. The progress report shall include, but not be limited to:

009.01 A comprehensive expenditure report of all grant funds, including any interest earned on grant funding by line item, and all other income utilized to carry out the project;

009.02 Copies of all receipts for expenditures of grant funding and expenditures of all interest earned on grant funding;

009.03 An inventory of all equipment or personal property purchased with grant funding including model number and serial number; and

009.04 Any additional information required.

010 If a grantee wishes to modify a project other than one covered by section 006 above, the grantee must submit a proposed amendment to the grant agreement including a revised line-item budget. The proposed amendment must be submitted to the Executive Director at least 30 days prior to the requested changes with an explanation of need. The Executive Director will then either approve or deny the proposal and inform the grantee in writing of his or her decision.

010.01 Any expenditure of grant funds not in accordance with the grant agreement and not pursuant to the process set out in section 008 may be considered a violation of the grant requirement.

011 Equipment and other personal property purchased with grant funding shall be used only for purposes of the grant.

012 Failure by the grantee to comply with these regulations or with the grant agreement may result in a revocation of the grant, a withholding of grant disbursements or a requirement to reimburse the fund for money already disbursed under the agreement.

012.01 Prior to any action under 012 by the Executive Director, there shall be a written notice to the grantee explaining the intended action and the reason it may be taken. The grantee shall have 15 days to respond to the notice and may request an informal meeting with the Executive Director within that time frame. After 15 days have expired, the Executive Director may proceed with his or her action under section 012.

013 In addition to financial progress reports as required in section 008, grantees shall submit annual reports to the Trust Board. The Trust Board shall conduct annual reviews of all projects for compliance with the project goals and grant requirements. Annual reports shall be due as specified in the grant agreement.

014 The Executive Director shall conduct periodic financial audits of all projects at a frequency as determined by the Executive Director. Audits shall be performed to ensure proper use of grant funds and to determine compliance with these regulations and with the grant agreement.

014.01 Grantees shall retain all records related to a project and shall allow access to the records by the Executive Director or his or her designee during regular business hours or at any reasonable hour of the day.

014.02 The grantee shall allow access for inspection of any equipment, property, or other tangible object for which grant funds were expended to the Executive Director or his or her designee.

Chapter 9 - DEFINITIONS

001 "Annual Calendar" shall mean the calendar established each year by the Trust Board to set out various deadline dates relating to establishment of priorities and allocation of grants.

002 "Applicant" shall mean any person, or their authorized agent, who submits and signs an application for grant allocations.

003 "Executive Director" shall mean the Executive Director of the Nebraska Environmental Trust Fund.

004 "In-kind Match" shall mean the economic value of any non-monetary donated contribution to the development of a project by the applicant or project co-sponsors including but not limited to labor, equipment usage, lands, land rights, facilities or other items essential to the project.

005 "Primary, Tangible Benefits" shall mean a project's net values, expressed in monetary terms, of increases in products and services and of reductions in costs, damages, or losses of primary beneficiaries.

006 "Trust Board" shall mean the Environmental Trust Board.

007 "Trust Fund" shall mean the Nebraska Environmental Trust Fund.